REMARKS

Applicants respectfully submit the arguments herein traverse the outstanding rejections and objection and respectfully asks the Examiner to reconsider and withdraw them. Claims 1-2, 7-8, 12-13 and 18 currently stand rejected under 35 U.S.C. § 102. Claims 5 and 6 stand rejected under 35 U.S.C. §103(a). Claims 3-4, 9-11, 14-17, 19 and 20 are currently objected to, but are indicated as having allowable subject matter. Claims 1, 9, 12, 16 and 18-19 have been amended. Claims 1-20 are pending.

Rejection under 35 U.S.C. § 101

The Examiner states "[i]n claim 1, the claimed invention is directed to non-statutory subject mater because it does not fall under on of the four categories of 35 U.S.C. §101." The Examiner recommends that the term "a system" be amended to read "a computer system" with every occurrence. Applicant respectfully traverses the Examiner's rejection of claim 1 under 35 U.S.C. §101.

As stated by the Examiner, the subject matter of an invention or discovery must come within the boundaries set forth by 35 U.S.C. §101, which permits patents to be granted only for any new and useful process, machine, manufacture, or composition of matter, or any new or useful improvement thereof." United States Supreme Court has held that Congress chose the expansive language of 35 U.S.C. §101 so as to include "anything under the sun that is made by man." *Diamond v. Chakrabarty*, 447 U.S. 303, 308-309, 206 USPQ 193, 197 (1980). M.P.E.P. 706.03(a) and 2106 state that court decisions have determined the limits of the statutory classes and gives examples of subject matter not patentable as including (i) printed matter, (ii) naturally occurring articles, (iii) scientific principles, and (iv) those limits imposed by the Atomic Energy Act. Applicant would note that the Examiner does not contend that the subject matter of the present invention is described by any of these examples.

Applicant respectfully asserts that "a system" as claimed by claim 1 is a thing made by man and therefore a machine or manufacture under §101. The Examiner has not explained how a system cannot be included under a machine or manufacture, and further has not explained how a "computer system" would be statutory under §101 while a "system" would not be. Applicant respectfully asserts that the Examiner need to provide a complete analysis of how the "system" of claim 1 is non-statutory, and how the recitation of a

"computer system" would make claim 1 statutory, or the Examiner should withdrawn the rejection under 35 U.S.C. § 101.

Rejection under 35 U.S.C § 102

Claims 1-2, 7-8, 12-13, and 18 stand rejected under 35 U.S.C. §102 as being anticipated by Stankovic, et al., *The Case for Feedback Control Real-Time Scheduling*, 1999, Dep't of Computer Science, University of Virginia (hereinafter Stankovic).

It is well settled that to anticipate a claim, a reference must teach every element of the claim, see M.P.E.P. § 2131. Moreover, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he elements must be arranged as required by the claim," see M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, "[t]he identical invention must be shown in as complete detail as is contained in the . . . claim," see M.P.E.P. § 2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Applicant respectfully asserts that the rejections do not satisfy one or more of these requirements.

Claim 1, as amended, requires a user selectable priority for each of the plurality of applications. Stankovic does not describe at least this limitation. Stankovic describes a feedback control earliest-deadline-first (FC EDF) algorithm, which integrates PID control with an EDF scheduler. Stankovic, section 3. As indicated by its name, the EDF scheduler relies upon deadlines associated with each task to schedule tasks for submission to a CPU. Stankovic, section 3.1 and Figure 2. Stankovic adds the PID controller, which monitors at miss ratio (the proportion of tasks not completed by the deadline) to provide feedback to the FC EDF controller to work to drive missed deadlines to zero by adjusting the operation of a service level controller and an admission controller. Stankovic, section 3.1 and Figure 2. This is done by estimating the CPU utilization of each task and tracking the CPU utilization of accepted tasks with available CPU resources and adjusting the tasks accepted by the admission control or the allocated CPU resources for a particular task. Stankovic, sections 3.4-3.6.

Nowhere does Stankovic describe a user-selectable priority for an application used by an arbiter to adjust an allocation request value, as required by claim 1. Stankovic only

describes an EDF scheduler and PID control based on a miss ratio of missed deadlines. As Stankovic does not describe a user-selectable priority for each of a plurality of applications, Stankovic does not describe each and every limitation of claim 1 as required by §102. Applicant, therefore respectfully asserts that claim is allowable over the rejection of record.

Claim 12 requires code for adjusting an allocation request value based on a user-selectable priority for the at least one application. Claim 18 requires adjusting an allocation request value based on a relative priority between applications. For the reasons set forth with respect to claim 1, Applicant respectfully asserts that Stankovic does not describe at least these limitations, and claims 12 and 18 are allowable over the rejection of record.

Claims 2-4 and 7-11 depend from claim 1. Claims 13-17 and 19-20 depend from claims 12 and 18, respectfully. Each of these dependent claims inherit all the limitation of their respective base claims. As claims 1, 12 and 18 are allowable for the reasons set forth above claims 2-4, 7-11, 13-17 and 19-20 are allowable over the rejection of record.

Rejection under 35 U.S.C § 103(a)

Claims 5 and 6 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Stankovic.

Claims 5 and 6 depend from claim 1 and inherit all the limitation of their base claim. As claim 1 is allowable for the reasons set forth above claims 5 and 6 are allowable over the rejection of record as being dependent from an allowable base claim.

Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 08-2025, under Order No. 10992091-1 from which the undersigned is authorized to draw.

Dated: November 8, 2006

Respectfully submitted,

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